

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Charles Smith,

Petitioner,

V.

William Hutchings, et al.,

Respondents.

Case No.: 2:20-cv-01781-RFB-VCF

Order

10 On January 11, 2021, this court granted petitioner Smith's motion for appointment of
11 counsel and appointed the Federal Public Defender (FPD) to represent him in this proceeding
12 under 28 U.S.C. § 2254. ECF No. 7. Because counsel for both parties have appeared (ECF Nos.
13 10, 11), the court now issues the following scheduling order:

14 **Amended Petition.** If petitioner wishes to file an amended petition in this action, he must
15 do so within **45 days** of the date this order is entered. The amended petition must state whether
16 each ground for relief has been exhausted in state court. For each claim that has been exhausted,
17 the amended petition must state how, when, and where that occurred.

18 **Response to Petition.** Respondents will have **60 days** from receipt of the amended petition
19 (or from the expiry of the period for filing an amended petition if none is filed) to file and serve
20 an answer or other response to the amended petition.

21 **Reply.** Petitioner will have **45 days** following service of an answer to file and serve a reply.
22 Respondents will then have **30 days** from receipt of the reply to file and serve a response to the
23 reply.

1 **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss, petitioner will have
2 **60 days** following service of the motion to file and serve a response to the motion. Respondents
3 will then have **30 days** following service of the response to file and serve a reply.

4 **Discovery.** If petitioner wishes to move for leave to conduct discovery, he must file and
5 serve that motion concurrently with, but separately from, the response to respondents' motion to
6 dismiss or the reply to respondents' answer. Any motion for leave to conduct discovery filed by
7 petitioner before that time may be considered premature, and it may be denied without prejudice
8 on that basis. Respondents' response to any motion for leave to conduct discovery must be filed
9 concurrently with, but separately from, their reply in support of their motion to dismiss or their
10 response to petitioner's reply. Petitioner will then have **20 days** to file and serve a reply in support
11 of his discovery motion.

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1 **Evidentiary Hearing.** If petitioner wishes to request an evidentiary hearing, he must file
2 and serve a motion for an evidentiary hearing concurrently with, but separately from, the response
3 to respondents' motion to dismiss or the reply to respondents' answer. Any motion for an
4 evidentiary hearing filed by petitioner before that time may be considered premature, and it may
5 be denied without prejudice on that basis. The motion for an evidentiary hearing must specifically
6 address why an evidentiary hearing is required and must meet the requirements of 28 U.S.C. §
7 2254(e). The motion must state whether an evidentiary hearing was held in state court, and, if so,
8 identify where the transcript is located in the record. If petitioner files a motion for an evidentiary
9 hearing, respondents' response to that motion must be filed concurrently with, but separately from,
10 their reply in support of their motion to dismiss or their response to petitioner's reply. Petitioner
11 will then have **20 days** to file and serve a reply in support of the motion for an evidentiary hearing.

12 **IT IS SO ORDERED.**

13 Dated: February 8, 2021

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15 RICHARD L. BOULWARW, II
16 U.S. District Judge

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